

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

CIVIL ACTION NO. 3:08CV635-MHT

One Parcel of Real Property Located at)

444 Essie Morris Road, Brownsville)

Community, Macon County, Alabama,)

Defendant.)

RECOMMENDATION OF THE MAGISTRATE JUDGE

The United States Marshal's office personally served Demitres M. Morris and Ethel Jean Morris with notice of the present forfeiture action on August 22, 2008 (Docs. ## 5, 7). Both filed answers on September 16, 2008, asserting ownership interests in the defendant property and raising the innocent owner defense. (Docs. ## 12, 13).¹ On October 10, 2008, the United States filed a motion to strike both claims, because the claims -- while signed -- were not signed under penalty of perjury. The court allowed both claimants an opportunity to respond to the government's motion to strike. Claimant Demitres M. Morris did not respond to the motion within the time allowed by the court, nor did he seek an extension of time to respond. Claimant Ethel Jean Morris responded to the motion to strike by filing a

¹ The U.S. Marshal's office served notice on several other individuals; no others have filed claims.

verified claim.

Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, Rule G(8)(c)(i) provides that the government may move to strike a claim or answer for failing to comply with Rule G(5) or (6), or because the claimant lacks standing. As noted above, Demitres M. Morris' claim and the initial claim filed by Ethel J. Morris are not sworn or signed under penalty of perjury. "A verified claim is a sworn notice of claim and 'is essential to confer[ring] statutory standing upon a claimant in a forfeiture action.'" U.S. v. \$125,938.62, 370 F.3d 1325, 1328 (11th Cir. 2004); see also 18 U.S.C. § 983(a)(4)(A); Supplemental Rule G(5). Because he has not filed a verified claim, Demitres M. Morris lacks standing as a claimant in this action, and the government's motion to strike is due to be granted as to his claim. Ethel Jean Morris, however, has now supplemented her original claim with another signed under oath.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that the United States' motion to strike (Doc. # 18) be GRANTED as to the claim of Demitres M. Morris, and DENIED as to the claim of Ethel Jean Morris.

The Clerk of the Court is ORDERED to file the Recommendation of the Magistrate Judge and to serve a copy on the parties to this action. The parties are DIRECTED to file any objections to this Recommendation on or before December 3, 2008. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation objected to. Frivolous, conclusive or general objections will not be considered by the District Court.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. Resolution Trust Co. v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993); Henley v. Johnson, 885 F.2d 790, 794 (11th Cir. 1989).

DONE, this 19th day of November, 2008.

/s/ Susan Russ Walker
SUSAN RUSS WALKER
CHIEF UNITED STATES MAGISTRATE JUDGE